



WISCONSIN LEGISLATIVE COUNCIL

*Anne Sappenfield, Director
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TO: SPEAKER ROBIN VOS

FROM: Anne Sappenfield, Director

RE: Voting on Legislation Affecting a Legislator's Interest

DATE: May 8, 2019

This memorandum, prepared at your request, addresses whether a legislator may participate in the consideration of and vote on legislation that relates to the legislator's profession or other interest and could, therefore, benefit or disadvantage the legislator.

The Wisconsin Ethics Commission has opined that the Wisconsin Ethics Code does not wholly prohibit a legislator from participating in the consideration of or voting on legislation that affects the legislator's interest. Specifically, a legislator may participate and vote on legislation if the legislation affects a class of interests that includes the legislator's and if the effect on the legislator's interest is not disproportionate to the effect on other interests in the class.

CURRENT LAW

The question of whether a legislator may participate in the consideration of and vote on legislation that relates to the legislator's profession is a question of conflict of interest under the Ethics Code. Under the Ethics Code, except in accordance with the Ethics Commission's advice, a legislator may not:

- Take any official action substantially affecting a matter in which the legislator, the legislator's immediate family, or an organization with which the legislator is associated has a substantial financial interest
- Use his or her office to produce a substantial benefit for the legislator.

[s. 19.46 (1), Stats.]

However, s. 19.46 (3), Stats., specifies that this provision does not prohibit a legislator from taking official action with respect to any proposal to modify state law.

Additionally, the Ethics Code prohibits a legislator from using his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization for which he or she is associated. [s. 19.45 (2), Stats.]

ETHICS COMMISSION OPINION

The Ethics Commission has opined that a legislator may participate in the consideration of and vote on legislation, even though the action will affect the legislator, a member of the legislator's immediate family, or an organization with which the legislator is associated if all of the following conditions are met:

- The legislator's action affects a whole class of similarly situated interests.
- Neither the legislator's interest, the interest of a member of the legislator's immediate family, nor the interest of a business or organization with which the legislator is associated is significant when compared to all affected interests in the class.
- The actions effect on the interests of the legislator, or a member of the legislator's family, or of the related business or organization is neither significantly greater nor less than upon other members of the class.

[ETH-1232, *Mitigating Conflicting Interests: Private Interest vs. Public Responsibility.*]

In applying this opinion, the Ethics Commission may consider factors such as whether the legislation affects only the interests of the legislator's profession or whether it affects a broader range of professions, the number of similarly situated people who might be affected, and whether the effect on the legislator is significantly different than on other members of the class.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

AS:ksm